



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,642	08/25/2003	David Ernest Hartley	PA-5343-RFB	2511
9896 7590 05/29/2008 COOK GROUP PATENT OFFICE P.O. BOX 2269 BLOOMINGTON, IN 47402			EXAMINER PRONE, CHRISTOPHER D	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 05/29/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

---

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/647,642  
Filing Date: August 25, 2003  
Appellant(s): HARTLEY, DAVID ERNEST

---

Janet Pioli  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/14/08 appealing from the Office action mailed 9/13/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

A substantially correct copy of appealed claim 11 appears on pages 12 and 13 of the Appendix to the appellant's brief. Claim 11 has been changed from independent form back to depending upon claim 9. Claim 11 has been treated by the examiner as being dependent upon claim 9 since the beginning of prosecution. The examiner

agrees with the applicant that the claim was always intended to be dependent upon claim 9 and that this was simply a typo.

**(8) Evidence Relied Upon**

<b>5,873,906</b>	<b>Lau et al</b>	<b>2-1999</b>
<b>5562726</b>	<b>Chuter</b>	<b>10-1996</b>

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 7-9, 11, 12, 15-19, and 22 are rejected under 35 U.S.C. 103 as being unpatentable over United States Patent 5,873,906 Lau et al in view of United States Patent 5,562,726 Chuter.

Lau discloses the invention substantially as claimed being a self-expanding zigzag shaped stent graft mounted on a deployment device shown in figures 19A-22. Lau discloses that his stent is mounted on a guidewire catheter (304), which is contained by a trigger wire catheter (306) having a proximal end that is held in place by a retention device about a plurality of points shown best in figure 22. The retention device forms 3 lobes. There are two small upper lobes formed by upper retention points (324) and

(326) and one large lower lobe shown in figure 22 and again in the figure below for more clarity.

In regards to claim 18, Lau discloses the use of wires or polymeric thread (324) and (326) tied to the stent structure and the trigger wires for retention of the stent to the catheter (18:27-31)

Lau discloses the invention substantially as claimed being a stent graft coupled to a deployment device through trigger wires that engage suture loops, which remain on the stent after deployment. However, Lau does not disclose that the trigger wires exit the catheter through separate apertures at the retention points.

Chuter teaches the use of a graft and a delivery system wherein the trigger wire is directed through two apertures (236) equally spaced about the catheter just prior to the engagement with the graft in the same field of endeavor for the purpose of providing a smooth path for both of the trigger wires to be moved without obstructing each other.

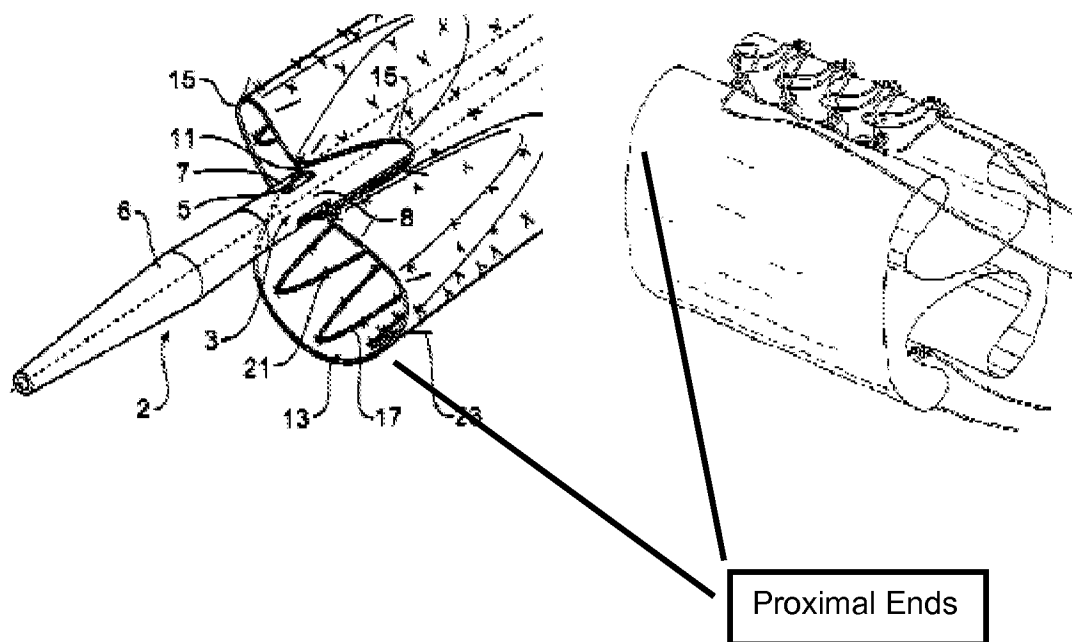
It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the apertures taught by Chuter with the deployment device of Lau in order to keep the trigger wires untangled and separate from each other allowing a smoother release of the stent.

#### **(10) Response to Argument**

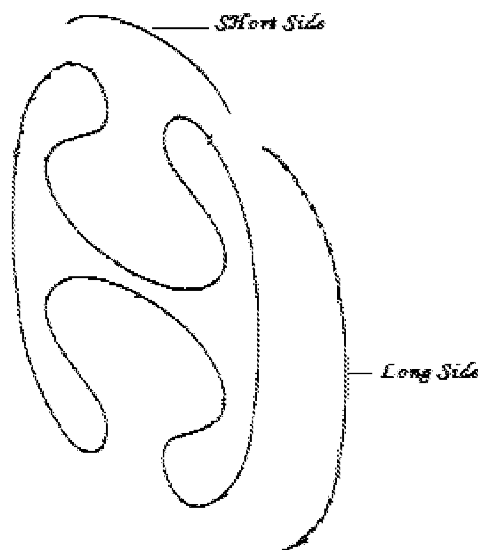
The applicant argues that the trigger wire of Lau is not connected to a trigger wire catheter because the connection points are connected to each other not the delivery device. This is not convincing because the claims never recite that the trigger wire is connected to the delivery device. The claims require that the stent graft is retained on

the delivery device and that the trigger wire passes through apertures in the delivery device. Lau clearly teaches the trigger wire attaches to the stent graft at a plurality of retention points and that the folded condition retains the stent graft on the delivery device. The modification of Chuter adds the apertures to the delivery device of Lau in order to guide the trigger wires.

Applicant further argues that the proximal end of the implant of Lau is not retained at its proximal end. This is not convincing because the proximal end of the device is mislabeled in the applicant's marked up figure on page 7 of the appeal brief. The applicant correctly marked the proximal end in his attached figure in the pre-appeal brief. The wires extend distally to the back of the delivery device of Lau. Therefore the proximal end of Lau's implant is retained. The examiner is including side by side figures of the applicant's invention and that of Lau to show how they match up.



Applicant further argues that there is not a greater circumferential distance between the two adjacent retention points and the other retention points. The applicant supports this argument stating that Lau is teaching away from the applicants claims because Lau wants to prevent untwisting of the torsion members, which would not provide an asymmetric arrangement. This is not convincing because there is a greater circumferential distance between the retention points as shown in the figure below. In view of the applicant's proposal that Lau teaches away from the current claim language, the examiner maintains that the claims are broad enough to allow the interpretation of the lower two small flaps of Lau to be considered a single large lobe. The examiner is simply viewing the device differently. The examiner's interpretation does not change the device of Lau structurally or how it functions. Therefore Lau never teaches away from this interpretation.



Art Unit: 3700

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Christopher D Prone/

Conferees:

Corrine McDermott

/Corrine M McDermott/

Supervisory Patent Examiner, Art Unit 3738

Thomas Barrett

/Thomas Barrett/

TQAS TC3700